

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0353 RO**  
**Responsible Officer Liability—Duty to Remit Withholding Taxes**  
**For The Period: 1995 and 1996**

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**ISSUE**

**Responsible Officer Liability:** Duty to Remit Withholding Taxes

**Authority:** IC 6-3-4-8, Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995)

Taxpayer protests the Department's determination of responsible officer liability for withholding taxes not paid during the assessment period.

**STATEMENT OF FACTS**

Taxpayer was a volunteer on the board of directors for the not-for-profit organization that failed to remit Indiana withholding taxes. Taxpayer was Treasurer of the organization from sometime in 1991 until resigning on July 31, 1994. The Department assessed withholding tax liabilities for July 1995 to June 1996 on taxpayer after her resignation.

Additional facts will be included as necessary.

**DISCUSSION**

IC 6-3-4-8(f) states in part:

All money deducted and withheld by an employer shall immediately upon such deduction be the money of the state, and every employer who deducts and retains any amount of money under the provisions of IC 6-3 shall hold the same in trust for the state of Indiana. . . .

In order to determine which persons are personally liable for the payment of these “trust” taxes, the Department must initially determine which parties had a duty to remit the taxes to the Department. Indiana Department of Revenue v. Safayan, 654 N.E.2d 270, 273 (Ind. 1995), is instructive:

The method of determining whether a given individual is a responsible person is the same under the gross retail tax and the withholding tax . . . . An individual is personally liable for unpaid sales and withholding taxes if she is an officer, employee, or member of the employer who has a duty to remit the taxes to the Department . . . . The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.

The Indiana Supreme Court in Safayan identified three relevant factors:

- (1) the person’s position within the power structure of the corporation;
- (2) the authority of the officer or employee as established by the articles of incorporation, bylaws, or the person’s employment contract; and
- (3) whether the person actually exercised control over the finances of the business.

During the period in which taxpayer was the Treasurer for organization liable for remitting withholding tax, taxpayer may have been a responsible officer. However, in this case, taxpayer had resigned as the treasurer before the liabilities in 1995 and 1996 were assessed. A past chairman of the board submitted a letter to verify this assertion. Also, the current responsible person for withholding taxes in the organization affirmed that he has been responsible for remitting the tax since taxpayer’s resignation on July 31, 1994.

### **FINDING**

The taxpayer’s protest is sustained.